

**Board for Judicial Administration
Meeting Minutes**

**September 19, 2008
AOC SeaTac Office
SeaTac, Washington**

Members Present: Chief Justice Alexander, Chair; Judge Vickie Churchill, Member-Chair; Judge Marlin Appelwick; Judge C. C. Bridgewater; Judge Ronald Culpepper (by phone); Judge Sara Derr; Judge Tari Eitzen; Judge Deborah Fleck; Mr. Jeff Hall; Judge Michael Lambo; Justice Barbara Madsen; Judge Richard McDermott; Judge Robert McSeveney; Judge Marilyn Paja; Judge Glenn Phillips; and Judge Christine Quinn-Brintnall

Guests Present: Justice Mary Fairhurst, Ms. Marti Maxwell, and Ms. Barb Miner

Staff Present: Mr. Rick Coplen (by videoconference), Ms. Ashley DeMoss, Ms. Wendy Ferrell, Ms. Beth Flynn, Ms. Katrin Johnson (by videoconference), Mr. Dirk Marler, Ms. Mellani McAleenan, Dr. Carl McCurley; Ms. Regina McDougall, Mr. Ramsey Radwan, and Mr. Chris Ruhl

Call to Order

Chief Justice Gerry Alexander called the meeting to order.

July 18, 2008 Meeting Minutes

By consensus, the July 18, 2008 meeting minutes were approved as distributed.

Public Trust and Confidence Committee – Children’s Activity Book

Justice Fairhurst stated that the Public Trust and Confidence Committee is requesting Board for Judicial Administration (BJA) approval of the *What’s Happening in Court?* children’s activity book so it can be copied and distributed at the Annual Judicial Conference in October.

A significant amount of committee time was spent going line by line to ensure age-appropriate language and the book has been reviewed by Justice Bobbe Bridge. The book is designed to be used in court and also by other groups such as teachers.

Judge McDermott commented that the book is an amazingly good publication. He stated it would certainly be nice to see it as part of the education curriculum. Judge McDermott suggested approaching the Superintendent of Public Instruction regarding the book being made available for use in schools. Justice Fairhurst stated there will be

a link on the Council of Public Legal Education and Washington State Bar Association Web sites.

Judge Fleck asked if a color version of the book is available. Ms. Ferrell responded that they are trying to keep costs down by using black and white. Judge Fleck suggested having a color version, along with the black and white version, available online because it would give a greater sense of inclusiveness in color.

Judge Churchill was recently contacted by the American Association of University Women (AAUW) and she suggested contacting the statewide organization to ask about interest in funding a portion of the copying costs. Judge McDermott suggested contacting the Rotary Club for funding assistance.

It was moved by Judge Appelwick and seconded by Judge Derr that the BJA approve the Public Trust and Confidence Committee's *What's Happening in Court?* children's activity book. The motion carried.

Jury Source List Update

Mr. Hall explained that the Court Management Council (CMC) is working on making improvements in the area of jury management. As a result, the CMC is proposing a revision to GR 18 Appendix and is requesting that the BJA endorse the proposed revision.

Mr. Coplen shared that only in recent years, with an update in county systems, has there been a mechanism available to validate jury contact information. Counties have found that 25% of all summonses are being returned because of address issues. Current court rule requires courts to continue sending jury summonses to addresses they know are bad. In King County, alone, it could be costing \$17,000 - \$18,000 on postage each year.

The proposed rule change would 1) remove inactive status voters from the jury source list, and 2) remove driver's license/identocard holders whose license/identocard has been expired longer than 90 days. This recommendation originally came from the Jury Commission and was approved by the BJA in 2000. At the time, it was seen as a problem and not pursued.

It was moved by Judge Paja and seconded by Judge McDermott to endorse the proposed rule amendment with the caveat that implementation be accompanied by media announcements/press releases advising the public of the change. The motion carried with Justice Madsen abstaining.

Reconsideration of Interpreter Budget Submission to Supreme Court

Mr. Hall explained that because of the current budget environment, Chief Justice Alexander sent a letter to the Administrative Office of the Courts, Office of Public Defense, and the Office of Civil Legal Aid requesting each agency to reconsider their 2009-2011 biennial budget requests. As a result, the BJA has some revisions to the interpreter funding request to consider.

Mr. Hall asked Mr. Ruhl and Ms. Johnson to develop some options regarding interpreter funding showing what different budget reduction amounts might mean. The original funding request was to provide 50% reimbursement to all trial courts statewide, at a total cost of \$5.5 million. Current funding is approximately \$1.5 million so the net request in additional funding is approximately \$4 million.

Currently, groups of courts in twelve counties are receiving state funding. The current funding amount represents approximately 28% of the limited English proficient (LEP) population of Washington. It is anticipated that an application process will be completed this fall, prior to the legislative session, to determine the number of counties interested in participating in the funding program. The counties will also be prioritized during the application process.

Mr. Hall suggested recommending that the Supreme Court reduce the funding request from serving 100% of the state's LEP population to 50% or 75%, which would require increased funding of \$1.2 million or \$2.6 million.

Judge Paja expressed concern regarding the amount of funding being requested for Justice In Jeopardy initiatives. Her concern is not just this interpreter piece but all three funding initiatives. She is very concerned that whatever funding the judicial branch requests, the entire branch will be branded with it.

Judge Churchill understands the concern but stated if the judiciary does not ask, the judiciary will never receive funding for important initiatives.

Judge Appelwick stated when facing a \$3 billion deficit, most people do not get more in terms of services. Agencies may receive more funding but that is at a maintenance level. For the Supreme Court to grant its blessing and ask for any increases in funding, it needs to be done with a really respectful tenor. With a \$3 billion budget shortfall, the reality is that most agencies are looking at significant cuts and there will be layoffs. It could reflect poorly on the Court if the request is not made properly. Judge Appelwick advised that the judicial branch present a maintenance level budget to minimize the cuts.

Chief Justice Alexander indicated that there is a lot of truth to what Judges Paja and Appelwick stated. He went on to say that this is going to be a tough budget year and

legislators will be lumping the judicial branch requests together. He said that the judiciary, therefore, needs to be sensitive to the present economic situation. Chief Justice Alexander also said that he wrote the letter to the judicial branch agency heads because it is important for the judicial branch to watch its spending during the remainder of this biennium. He pointed out, however, that the judicial branch provides the most important government function and necessary judicial branch services must be provided. Chief Justice Alexander indicated that the judicial branch should not be embarrassed to ask for funding it needs to provide necessary services.

Judge Fleck stated she wants to ensure the trial courts are at the table in pursuing Justice in Jeopardy initiatives.

It was moved by Judge Fleck and seconded by Judge McDermott to recommend to the Supreme Court Budget Committee both the 75% and 50% interpreter funding levels with two comments. 1. The only funding requests likely to pass this legislative session are items included in the Supreme Court budget. 2. Because interpreter funding is an area that resonates with legislators, it is likely incremental funding progress can be made with this request. The motion carried with Justice Madsen abstaining.

Legislative Dinners

Ms. McAleenan stated that six legislative dinners have been tentatively scheduled throughout the state, pending BJA approval, and local judges and legislators will be invited to the dinners. Holding the dinners in various locations increases the turnout. The dinners will cost approximately \$9,500 and are funded by the BJA and included in the BJA Long-Range Plan.

It was moved by Justice Madsen and seconded by Judge Derr to approve the legislative dinners. The motion carried.

Ms. McAleenan will be asking the Superior Court Judges' Association (SCJA) and District and Municipal Court Judges' Association (DMCJA) to invite judges and encourage participation. She said the Administrative Office of the Courts will provide a list of key legislators so judges can make personal invitations to those legislators. More information will be provided as the dates get closer.

BJA Long-Range Planning Committee Taskforce Referral

Judge Churchill stated the BJA has been asked to review a BJA Long-Range Planning Committee Taskforce referral regarding the following recommendation: "DMCJA should propose legislation that would require public defense costs to be placed outside the budget of the courts."

Mr. Hall shared that this recommendation is from the 1997 Wilson Report which stated the inclusion of public defender expenditures in court budgets is inappropriate and the practice should be discontinued. Mr. Hall also stated that it is inappropriate for court administrators to sign off on public defense costs each month and the court administrator should not be involved in contracting with public defenders. Mr. Hall commented that this is a valid recommendation.

Judge Paja spoke on behalf of the DMCJA and said there are a lot of courts that include public defenders in their court budgets. They are working on trying to make public defense a separate line item in court budgets. The DMCJA Legislative Committee will consider this recommendation and then send it to the DMCJA Board for consideration.

Mr. Hall would like to check with the Office of Public Defense (OPD) to determine if they have an opinion on the recommendation.

It was decided that the BJA will await a recommendation from the DMCJA. Mr. Hall will contact the OPD for their opinion and current information regarding county and city public defense funding. The BJA will consider this referral at a future BJA meeting.

2009 Salary Commission

Chief Justice Alexander reported that the Washington Citizens' Commission on Salaries for Elected Officials is gearing up to perform its constitutional and statutory mandate and the BJA, therefore, needs to decide what salary proposal it wishes to make to the commission. In the past, the BJA has proposed that Washington's judicial salaries should be moved toward parity with the federal courts. We have, in the recent past, achieved some success in receiving COLAs plus additional percentage increases as steps toward parity with the federal courts.

Mr. Hall reported that the Salary Commission's first meeting is November 19 and it is an organizational meeting. The first public meeting will be in January. The Administrative Office of the Courts (AOC) is organizing informational materials for the Commission members and will share the packet with the presidents of each judicial association.

Suggested information to include in the Commission packets:

- Numbers of judges leaving the bench and joining mediation firms.
- Statistics and figures related to age and length of judicial service which indicates the need to attract competent, qualified judges to fill vacancies created by retirements.

This will be included on the October BJA meeting agenda.

Jury Research Project Report

Dr. Carl McCurley is the manager of the Washington State Center for Court Research and he presented information gathered during the Juror Pay research project. The main reasons for the project were 1) to determine if Washington's juror pay rate of \$10 a day discouraged some citizens from participating in jury duty, 2) to determine if a pay increase would broaden participation, and 3) to determine if demographic representativeness would increase with higher juror pay. A draft final project report will be delivered internally on October 3.

The project was funded by the Legislature and began in November 2006 and ran through October 2007 in Clark County superior and district courts, Franklin County superior and district courts, Pasco Municipal Court and Des Moines Municipal Court.

Data sources for the project were jury yield from jury administration systems, a juror in-court demographic survey, and a telephone survey.

The following conclusions were made from the project data: 1) Juror compensation is one of several factors affecting juror participation, 2) there is no clear association of increased pay with higher juror yield, 3) increased pay is noticed and appreciated by those who serve, and 4) expanded public awareness efforts may enhance the impact of increased juror pay.

Judge McDermott was surprised by the results because each day he picks jurors from South King County and they have monetary excuses for not being able to perform jury service. His experience has been almost polar opposite of the research project results.

Judge Appelwick asked if the data indicated jurors who were not paid by their employers during jury service were influenced by the increased pay. Dr. McCurley stated they did gather that data, and it would be included in the final report, but he did not have that information with him. Judge Appelwick pointed out that if an employer is paying an employee's wages during jury service, then juror pay does not matter. If someone is self-employed, \$60 is not enough compensation. Judge Appelwick suggested looking at some other funding configurations such as not reimbursing jurors if their employers do.

Judge McSeveney stated the BJA previously voted to make the juror pay issue a funding priority. Given the Jury Research Project results indicate increased juror pay does not result in a higher juror yield, should the BJA reconsider that funding priority? Judge Paja indicated she would like the BJA to reconsider the funding priorities.

Mr. Hall indicated the juror pay issue could be referred back to the Trial Court Operations Funding Committee to consider additional options regarding a juror pay

increase. This will be a legislative request so a decision to go forward will not be required by the BJA until the first week of the legislative session.

Justice in Jeopardy Implementation Committee

Judge Fleck reported that the Justice in Jeopardy Implementation Committee met earlier in the week and had a relatively short agenda but it was meaty, in part because they had the expenditure forecast presented by Mr. Charlie Gavigan, House Appropriations Committee Staff Coordinator. He stated the Legislature uses the March caseload forecast for budget purposes and the expected shortfall is approximately 6% of the state budget. The judicial branch is .7% of the state budget and judicial branch funding has increased each year.

The committee discussed meeting with legislators, the Governor, and the media to explain the judicial improvements that are necessary for an effective and efficient judicial system.

The next meeting is scheduled for November.

BJA Long-Range Planning Committee Quarterly Report

Ms. McAleenan shared that the BJA Long-Range Planning Committee would begin reporting to the BJA on a quarterly basis. A BJA Long-Range Planning Milestone Chart was included in the meeting packet.

Legislative Program Documents

Ms. McAleenan reported that the meeting materials contain a Court Tours for Legislators document and a Judicial Branch Legislative Advocacy Guide. Both documents will be e-mailed to judges and after the November election, they will be updated to reflect the most up-to-date information.

Reports from the Courts

Supreme Court: Justice Madsen reported that the three Supreme Court incumbents up for election, Justice Mary Fairhurst, Justice Charles Johnson, and Justice Debra Stephens, all received more than 50% of the vote in the primary.

The Supreme Court is holding court at Washington State University in Pullman next week.

The Supreme Court justices are participating in a CLE regarding the Washington State Constitution in Spokane on the last day of the Annual Judicial Conference. The CLE

will be for the local bar and law students and will be held at Gonzaga University School of Law.

Court of Appeals: Judge Quinn-Brintnall stated that at end of next week, Division II's building will go up for private sale and it is not expected to be on the market very long. The Court has negotiated a 10-year lease with the option to expand to additional third floor space if needed. Since the building will not be sold to another governmental agency, they are working on an addendum for security.

Judge Appelwick said Division I is getting the new law clerks and externs settled. He is looking forward to the Annual Judicial Conference.

Superior Courts: Judge McDermott reported that Mr. Tom Parker will be the SCJA lobbyist for the next two years. The SCJA is hoping to expand and ramp up their presence in Olympia and are planning their legislative priorities.

The Juvenile Court Administrators have met with Mr. Victor Moore, Director of the Office of Financial Management, regarding a proposal to take money that has gone through the Juvenile Rehabilitation Administration and have it pass through AOC. AOC will disburse the funds to juvenile courts. Judge McDermott is not sure how much support the proposal will get initially. It is an ongoing work in progress and Judge McDermott thanked Mr. Hall for his support in setting up the meeting with Mr. Moore.

The SCJA met with the Department of Corrections Secretary Eldon Vail to look at how much the state is spending to house prisoners and trying to find out how evidence-based treatment programs could save the state billions of dollars in terms of long-range housing needs. The SCJA is continuing to work with Secretary Vail to explore those options. The SCJA nominated Judge Stephen Warning and re-nominated Judge Dean Lum for the Sentencing Guidelines Commission. Both of them were present during the meeting with Secretary Vail.

Judge McDermott thanked Ms. McDougall for her assistance with committee appointments.

Regarding the Family and Juvenile Court Improvement Program, the SCJA submitted some funding alternatives to the Supreme Court and the SCJA considers the program to be very high-priority and encourages the Supreme Court to include it in their budget. Representative Ruth Kagi feels there is a much better chance of getting the funding by including it in the Supreme Court budget.

Courts of Limited Jurisdiction: Judge Paja stated that the DMCJA has awarded a \$10,000 matching grant to the District and Municipal Court Management Association (DMCMA) to assist them with succession planning by supporting education.

The DMCJA is working on legislative priorities.

The Regional Courts Subcommittee of the BJA is looking at regional courts which has been a long-time goal of the DMCJA. The Subcommittee will present recommendations to the BJA at a future meeting.

The DMCJA Long-Range Planning Committee is continuing to work on a change to CrRLJ 3.2 that governs bail forfeitures.

Judge Lambo mentioned that Senator Kline is interested in amending the property crime levels. Senator Kline may also seek to decriminalize the driving while suspended in the third degree (DWLS 3) offense with the intent of freeing up court time and resources in courts of limited jurisdiction to deal with the potential increase in property crime filings if the property crime threshold level is increased.

The DMCJA has been in discussions with OPD regarding DWLS 3. Senator Adam Kline also contacted OPD. Senator Kline invited the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Criminal Defense Lawyers (WACDL) to participate in the discussion. WAPA is against changing the law and WACDL thinks it is a great idea. OPD is going to do a feasibility study.

Administrative Office of the Courts

Mr. Hall reported that AOC is in the process of filling the Human Resources Associate Director position which was previously held by Ms. Mary Carol LaPalm. He expects to have that position filled by the next BJA meeting.

He is also working on an agency profile document. The document will lay out what programs the agency is working on, the cost of each program, and how many AOC staff are working on each program. Mr. Hall will present the AOC profile document to the BJA in December.

There being no further business, the meeting was adjourned.